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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
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SECOND APPEAL NO.1212 OF 2004

Raosaheb Bhau Ghudappa since
deceased by heirs and legal
representatives -
1.Smt. Shobha Raosaheb Chudappa & Ors. ..Appellants

Versus

Shri Ishwara Laxman Hirgude ..Respondents

Mr.T.S.Ingale for appellants
Mr.N.R.Bubna i/b A.A.Garge for respndent No.1.
.SP2

CORAM : P.V.KAKADE, J.
DATE : 29TH JUNE, 2005.

P.C.:

1.‰ The appellants have preferred this appeal against the judgment and order passed by Addl. District Judge, Sangli dated 15th September, 2004 dismissing the appeal and confirming the order passed by Civil Judge, Junior Division, Miraj dated 19th September, 2002 decreeing the suit for declaration and injunction filed by the plaintiff.

2.‰ I have heard the learned counsel for both sides. Perused the record.

3.‰ The Plaintiff had filed the suit against the defendants for declaration and possession of the properties as well as for perpetual injunction. The facts revealed from the record show that the suit properties initially were muted in favour of defendant nos.1 to 3 on the basis of application made by their father plaintiff by application dated 15.1.1985. The Mutation entry shows that application was given by the plaintiff stating that he wanted to enter the names of his three sons i.e. defendant nos.1 to 3 for the purpose of family and relating to all other aspects on the basis of Anewari jointly amongst them. Thereafter the names of defendant nos.1 to 3 were entered into the properties, in turn the defendant nos.1 to 3 transferred the land by registered Sale Deed dated 21.5.1992 in favour of defendant No.4. Thereafter the plaintiff filed the present suit for declaration and possession as

well as injunction against the defendants. Obviously, his sons i.e. defendant nos.1 to 3 did not prosecute the suit. The present appellant-defendant no.4 prosecuted the suit challenging the plaintiff's allegations. The learned trial judge came to the conclusion on the basis of available evidence that the plaintiff has proved his title to the suit properties and therefore, was entitled for relief of declaration and possession of the suit proeprties as well as for perpetual injunction. The defendant no.4's plea that he was estopped from claiming possession of suit land was held to be not proved and hence the suit came to be decreed.

.‰ The appeal was carried to the District Judge, Sangli. The ld. Addl. District Judge after hearing the parties came to the conclusion that the findings recorded by the lower court were legal and proper and therefore, dismissed the appeal. Hence the present appeal.

4.‰ At the outset, it may be noted that there is no substantial question of law involved in this appeal. The learned counsel for the appellants submitted that when the plaintiff had made application dated 15.1.1985 to the Revenue Authorities for entering the names of his three sons to the suit properties and consequently the names were mutated and thereby the defendant nos.1 to 3 had become exclusive owners of the impugned properties, and therefore, they had right to transfer the properties, which they did in favour of defendant no.4 by virtue of Sale Deed, and therefore, now the plaintiff was estopped by his own conduct to agitate the cause of the suit for possession and declaration. In this regard it must be noted that the basis for the defence of the present appellant to raise doctrine of estoppel is the mutation entries showing that the plaintiff had made an application dated 15.1.1985 asking the Revenue Authorities to enter the names of his three sons and consequent to which the defendant nos.1 to 3 transferred the properties in favour of the defendant no.4 and therefore, the suit filed in the year 1996 was not tenable. In view of this factual matrix, it is pertinent to note the very contents of the mutation entries on which the defence is based. Even assuming that the contents of the mutation entry are correct, as per the application given by the plaintiff, which is not brought on record, the entry at the most shows that the names were entered of three sons of plaintiff for "family purpose and with reference to all concerned for joint Anewari". In my opinion the word "joint" (Samaikat) is operative word, which would definitely shows the intention of the plaintiff was not to divide the properties by metes and bounds and therefore, it cannot be said that defendant nos.1 to 3 had become separate exclusive owners of the impugned properties by virtu of application dated 15.1.1985 given by the plaintiff. Therefore, the consequent transfer of the land by defendant nos.1 to 3 in favour of Appellant-Defendant no.4 cannot be held to be legal. This aspect show, whether inspite of the fact that the property was still kept joint, the plaintiff-father was

not a consenting party to the said sale transaction of the year 1992. In these circumstances the doctrine of estoppel of conduct cannot be invoked the present appellant.

5.‰ The learned counsel for the appellants sought to put reliance on the ruling of the Apex Court in the case of B.L.Sreedhar and Ors. vs. K.M.Munireddy (dead) and@@ AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA Ors. reported in (2003) 2 SCC 355, which deals with@@ AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA theory of doctrine of estoppel under Section 115 of the Evidence Act. Perusal of the said ruling and ratio thereof shows that there cannot be two opinions about the ratio laid down by the judgment of the Apex Court. However, it is quite clear that it is not applicable to the present case, especially when the appellant did not bring on record the original application of plaintiff which was given to the Revenue Authorities on which basis the entry in Register No.6 of Mutation was prepared. Moreover, even if it is assumed that the wording of the entry is correct, it clearly indicates that the intention of the plaintiff was still to keep the property in joint possession and shares by Anewari were entered into for the purpose of family arrangements. However, that does not mean that there was partition by meats and bounds and ownership title was vested on defendant No. 1 to 3 by virtue of said mutation entries.

6.‰ Once this position is clear, then it is seen that both the courts below have properly appreciated the entire evidence on record in its proper perspective and therefore, it would brook no interference.

7.‰ In the result the appeal stands dismissed.

.‰ Consequently the Civil Application No.1568 of 2004 shall also stands dismissed.

8.‰ At this stage the learned counsel for the appellant prays for Stay. In view of the facts and circumstances the execution of the impugned order stands stayed for six weeks.